

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. ANUHCR2024/0006

THE KING
VS.
KEVAUGHN SMALL

Appearances:

Mr. Daniel Lattery for the Crown
Mr. Wendell Alexander for the Defendant

2025: JULY 15TH

SENTENCING RULING

- [1] **BAKRE J.:** The convict, Kevaghnn Small was charged by an indictment filed on the 23rd day of January 2024. He was convicted on April 4th 2025 of one count of **Causing Death by Dangerous Driving.**
- [2] It was stated that on the 1st day of September 2021 he drove his car on New Street in a manner which was dangerous to the public and collided with Colin Joseph thus causing his death.
- [3] The fact as ventilated during the trial was that on the 1st day of September 2021, the accused was traveling on New Street towards Market Street. He turned on to Market Street without stopping to ensure that the road was clear of pedestrian traffic before making the turn. Upon turning, he collided with the deceased.
- [4] The video evidence showed that the vehicle ran over the deceased before it came to a stop. Emergency services attended to the scene and the deceased was taken

to the hospital but died six days later as a result of the head injuries he sustained from the accident.

- [5] The convict is now before this court for sentencing.
- [6] In this exercise, the court is in receipt of the sentencing Brief of the prosecution and also a Social inquiry Report on the convict written by Probation Officer, Ms. Rickelle Alfred.

THE LAW

- [7] The offence was charged as Causing Death By Dangerous Driving contrary to section 57(1) of the Vehicles and Road Traffic Act CAP 460 of the Revised Edition 1992 Laws of Antigua and Barbuda.

SENTENCING GUIDELINES

- [8] In the consolidated case of **R v Ruan Roberts ANUHCR2016/0148; R v Caleele Thomas ANUHCR2017/0054** Morley J. stated that:

“The test for whether driving is dangerous is that the driving must fall far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous, meaning it creates the danger of serious injury or serious damage.

Dangerous driving takes wholly innocent lives. Such deaths are not a type of mere unlucky ‘accident’. They are the consequence of gross irresponsibility behind the wheel. The standard of driving falls ‘far below’ the ordinary, not slightly below, and is ‘obvious’, not arguable, to the observer. It is a primary concern of parents for their children, and generally, that in an event of stupidity, sometimes momentary, sometimes protracted, on the part of someone usually driving too fast,

sometimes intoxicated, a loved one can be suddenly catapulted from this life. Dangerous drivers are a menace.

There is a public interest in safety on the roads. Sentences for this menace should deter. Folk must know that dangerous driving is a serious offence, easily avoided by paying full attention to the road and showing consideration for other road users. The challenges of driving on the island of Antigua are known to all behind the wheel, in that the road surface is sometimes uneven, with holes, there are few pavements, road markings are often only faintly visible, if at all, there are many blind hills and corners, and there is often little street lighting so that pedestrians in the road are without illumination.”

I take the fully content of this observation of Morley J. to mind in the determination of an appropriate sentence for this case.

CONSTRUCTING THE SENTENCE

- [9] The established principles of sentencing are retribution, deterrence, prevention and rehabilitation. **Lawton LJ in R v Sergeant (1974) 60 Cr App R 74 at 77** said:

“Those classical principles are summed up in four words: retribution, deterrence, prevention, rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts.”

- [10] I bear these principles in mind in making a decision of the sentence to be imposed on this Defendant.

- [11] I will look to the approach to sentencing for the offence of Causing Death by Dangerous Driving as articulated in the case of **R v Ruan Roberts; R v Caleele Thomas** as the learned judge therein sought to provide guidance on how to approach sentencing for this offence. In his view:-

“The starting point for any offence of dangerous driving should be imprisonment, and a fortiori if it causes death. This is because the offence is often a selfish or arrogant one, while potentially lethal, and yet is utterly avoidable simply by being considerate.”

- [12] Having reviewed various sentencing authorities in the Eastern Caribbean what is common is that a plea of guilty has often led to suspension of a prison sentence, whereas conviction by a jury has often led to immediate imprisonment, if of good character, for 12-18 months.
- [13] In **DPP v Kimo Liburd SKBHCR2013/0025** the appropriate sentence was determined to be a one-year sentence of imprisonment. The defendant's license was also be revoked for a period of five years and the court ordered that he be required to take an extended test if he wished to obtain a driver's license again.
- [14] The court is guided by the Sentencing Guidelines for Homicide Offences Re-Issued in January 2025, specifically the guidelines for Causing Death by dangerous Driving. Section 57(1) of the Vehicles and Road Traffic Act provides that the maximum sentence for the offence of Causing Death by Dangerous Driving is “imprisonment for a term not exceeding five years.”
- [15] An examination of the facts of this case shows that this is a serious matter which resulted in the death of the victim as always in this type of offence. The accused was adjudged to have driven in a manner that fell below the standard of a competent and careful driver. The consequence of this offence is always death of the victim.
- [16] In considering the seriousness of the offence, the circumstance of this case, the seriousness level falls within “Seriousness: Level C” it was clear that the convict made a brief but obvious danger move arising from a seriously dangerous manoeuvre or that he failed to have proper regard to vulnerable road user.

[17] The second stage is determining the seriousness of the offence. It is submitted that this offence falls into category B – Driving that created a substantial risk of danger. Category B is the most appropriate for this offence as it contains “a group of determinants of seriousness which in isolation or smaller number would place the offence in level C” but when considered together raises it to the level of category B. These determinants are as follows:

- a. A brief but obvious danger arising from a seriously dangerous manoeuvre.
- b. Driving whilst avoidable distracted
- c. Failure to have proper regard to vulnerable road users

[18] Having determined the consequence and the level of seriousness the court must now determine the starting point for the sentence. By consulting the sentencing guidelines the court may impose a sentence of 55% of the maximum sentence, with the ability to vary this sentence ranging from 40% to 70% of the maximum sentence. It is thus assessed at this initial stage at Two years and Nine months (2years and 9 months).

[19] After the starting point, this court shall now consider the aggravating and mitigating factors of the offence, and adjust upwards or downwards if required.

[20] **AGGRAVATING AND MITIGATING FACTORS**

The circumstances of this case present no aggravating and mitigating factor for this offence.

[21] In respect of the offender, I also do not see any aggravating factor for the offender but I consider his good behavior as a mitigating factor. I will thus reduce the sentence to two years and six months.

[22] This matter went to full trial thus there is no consideration for a waiver in the sentence. The accused spent nine days in prison and this will be taken into consideration.

CONSIDERATION OF SENTENCE

[23] In arriving at an appropriate sentence in this matter, I have considered the sentencing provisions under Section 57(1) of the Vehicles and Road Traffic Act, Cap. 460, which governs the offence of causing death by dangerous driving. Under this section, the Court, upon conviction on indictment, may impose a term of imprisonment not exceeding five years.

[24] Additionally, I have considered exercising the Court's inherent sentencing jurisdiction to order compensation instead of custodial sentence as the justice of this case demands. In cases involving death by dangerous driving, where a defendant is convicted of causing death or personal injury, to order the payment of compensation to the family of the deceased in my view is sometimes appropriate. This power is discretionary and may be exercised alongside with or without any custodial sentence or fine.

[25] In this case, I have been presented with evidence of ongoing civil proceedings arising from the same incident — namely, Claim No. ANUHCV2022/0328 — where a Judgment in Default of defence has been entered in favour of the wife and children of the deceased, Mr. Collin Joseph. However, I note that, as of the date of sentencing, the damages in that civil matter have not yet been assessed.

[26] In further considering the appropriate sentence, I have carefully weighed the seriousness of the offence against the broader impact of incarceration on the ability

of the convicted person to make meaningful reparation to the deceased's family. While imprisonment is a legitimate and available penalty for causing death by dangerous driving, I must also take into account the practical realities of what imprisonment would mean in this case, specifically, that it would effectively negate the offender's capacity to satisfy any civil judgment that may arise from proceedings yet to be filed or determined.

[27] In the present circumstances, I am acutely aware that the deceased left behind a wife and three children....., who have not only suffered the irreparable emotional loss of a husband and father..... but are also left to face the very real financial consequences of his sudden death.

[28] It is my view that, at the very least, they ought to be afforded some measure of immediate relief and recognition through a compensation order under the criminal jurisdiction, pending the outcome of any civil matter.

[29] I have taken into account the fact that such a criminal compensation order, while not exhaustive or necessarily reflective of the full extent of loss, may serve to bridge a gap and provide short-term support to the bereaved family. In making this decision, I have given significant weight to the needs and interests of the deceased's wife and children..... While I do not discount the gravity of the offence or the need for deterrence, I find that in the unique circumstances of this case, it would be just and proportionate to impose a sentence that facilitates rather than frustrates the family's ability to recover compensation, both now and through any civil proceedings that may follow.

[30] In these circumstances, I find it both lawful and fair to make a compensation order in this criminal proceeding. The sum awarded here may be taken into account in the civil assessment process to ensure that the family is appropriately compensated without resulting in duplicative recovery. Counsel for the claimant in the civil matter

may, as appropriate, apply to the civil court to adjust the quantum of damages awarded there, considering the sum ordered here.

[31] Accordingly, I order that the defendant, Kevaughn Small, pay compensation in the sum of EC\$20,000 to the wife and children of the deceased and the sum of \$10,000 (ten thousand dollars) to the mother of the deceased. With respect these compensation orders, it is directed that one half of the total sum shall be paid to each beneficiary within five (5) months, on or before 25th day of December 2025, with the balance to be paid in full not later than April 2026. In default of each installment payment, he shall serve the full term of two years and five months (2 years and 5 months) imprisonment.

[32] This sum is to be paid within 10 months from today's date, failing which the defendant shall serve the full two years and five months imprisonment.

[33] It is further ordered that the offender shall pay a fine in the sum of EC\$2,000.00, to be paid within six (6) months from the date of this order, failing which he shall serve a term of imprisonment of three (3) months in default.

[34] The defendant is further disqualified from holding or obtaining a driver's license for a period of 5 years from today.

SENTENCE

[35] Kevaughn Small, having been found guilty of the offence of causing death by dangerous driving, you are hereby fined the sum of EC\$ 2,000 (Two Thousand Dollars) to be paid within the next six months. You shall also pay compensation to the wife of the deceased, Sherona Stevens Joseph and his children in the sum of \$20,000 (Twenty Thousand Dollars) and \$10,000 (ten thousand dollars) to the mother of the deceased. One half of the total sum shall be paid to each beneficiary within the next five (5) months, that is, on or before 25th day of December 2025,

with the balance to be paid in full not later than April 2026. In default of each installment payment, you shall serve the full term of two years and five months (2years and 5 months) imprisonment. The nine days spent in prison will be taken into consideration.

Tunde A. Bakre
High Court Judge



By The Court

Registrar